



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MEMORANDUM

TO: Rick Ingraham, Part C Coordinator
California Department of Developmental Services

THROUGH: Ruth Ryder, Division Director *Ruth Ryder*
Division of Monitoring and State Improvement Planning (MSIP)
Office of Special Education Programs (OSEP)

Larry Ringer, Associate Division Director, MSIP *Larry Ringer*

FROM: Rhonda Spence, OSEP State Contact for California *Rhonda Spence*

SUBJECT: Specific Part C Assurance for Federal Fiscal Year (FFY) 2010

DATE: June 30, 2010

The Office of Special Education Programs (OSEP) has reviewed California's Federal Fiscal Year (FFY) 2010 grant application under Part C of the Individuals with Disabilities Education Act (IDEA Part C) and, in OSEP's June 29, 2010 Memorandum, identified three issues requiring additional action in order to make the application fully consistent with IDEA Part C requirements. This memo responds to California's IDEA Part C FFY 2010 grant application and June 29, 2010 e-mail correspondence and teleconference with OSEP.

The first issue identified in OSEP's June 29, 2010 Memorandum is regarding the State's system of payments policy regarding use of private insurance to pay for IDEA Part C services and the requirement to obtain parental consent for the disclosure of personally identifiable information to third parties prior to California using a parent's private insurance to pay for IDEA Part C services, consistent with 34 CFR §§303.402 and 303.460. During OSEP's June 29, 2010 teleconference with DDS, DDS staff referred to California Code of Regulations, Title 17, Division 2, Chapter 2 - Early Intervention Services, SubChapter 5 - Procedural Safeguards, Article 2 - Access Rights, §52169 Consent for Release of Information (California Reg. §52169), which expressly requires that: "Written parental consent shall be obtained before personally identifiable information is disclosed in writing or orally to anyone other than authorized employees specified by the regional center or LEA." Specifically, DDS staff confirmed that the requirements of California Regulation §52169 for written parental consent before personally identifiable information may be disclosed to a third party apply to the disclosure of personally identifiable information related to the use of private insurance to pay for costs of early intervention services under Part C of the IDEA. DDS's June 29, 2010 e-mail correspondence

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indicated that, "We will take the necessary measures, including revising policy descriptions as appropriate, to ensure compliance with these existing state and federal regulations concerning the disclosure of information." OSEP requests that California send a memorandum within the State to confirm that the requirements of California Regulation §52169 apply such that all early intervention service programs and providers must obtain written parental consent before personally identifiable information may be disclosed to third parties such as private insurers when California's uses a parent's private insurance to pay for costs of early intervention services under Part C of the IDEA. OSEP is also confirming that a parent's private insurance is not billed for those Part C services that are to be provided at no cost (including evaluations, assessments, service coordination services on the IFSP and the other services listed in 34 CFR §303.521(b) and Part C services provided to an eligible child whose parent is determined unable to pay under 34 CFR §303.520(b)(3)).

The other two issues are unresolved specific assurances from California's IDEA Part C FFY 2009 grant award in which DDS had assured that it would revise its policies to: (1) resolve as a State complaint any complaint that alleges any violation of a Part C requirement (including complaints regarding Part C eligibility or services) under 34 CFR §303.510; and (2) ensure that mediation is made available to parties at any time (and not just when a due process hearing request is filed) to resolve disputes involving any matter related to IDEA Part C, consistent with IDEA section 639(a)(8) (which references the requirements in IDEA section 615(e)(1)). Because these policies are not yet finalized, DDS must continue to provide a specific written assurance regarding the mediation and State complaint requirements.

In order to receive its FFY 2010 IDEA Part C grant award, DDS will need to provide a specific written assurance to OSEP that the State will: (1) Complete the actions identified in OSEP's June 29 and June 30, 2010 memoranda; (2) Ensure compliance in the interim throughout the FFY 2010 grant period; and (3) Send a memorandum to all early intervention service programs and providers and parents to inform them of these actions required by OSEP that affect the provision of early intervention services in the State under IDEA Part C.

Attached is assurance language that the State may use to meet the requirements addressed in this memorandum. Please submit the necessary assurance, dated and with the signature of an official who has authority to ensure compliance with the assurance, as soon as possible to avoid any delay in the State's grant award.

Please feel free to contact Larry Ringer or me if you have any questions or concerns.

Attachment

cc: Kala Surprenant

The California Department of Developmental Services (DDS) hereby specifically assures under Part C of the Individuals with Disabilities Education Act (IDEA Part C) that it shall:

- (1) Submit to OSEP by February 28, 2011, its revised California Code of Regulations §§52170, 52172, and 52173 to address the items in OSEP's June 29 and June 30, 2010 Memoranda (regarding the mediation and complaint requirements in IDEA sections 615(e)(1) and 639(a)(8)) and applicable regulations in 34 CFR §§303.419; 303.510 through 303.512);
- (2) Submit to OSEP by February 28, 2011, a written assurance that the State has revised all documents referenced in OSEP's June 29 and June 30, 2010 Memoranda including to address the items referenced in that Memorandum and analysis to be consistent with the mediation and complaint requirements in IDEA sections 615(e)(1) and 639(a)(8)) and applicable regulations in 34 CFR §§303.419; 303.510 through 303.512;
- (3) Submit to OSEP by August 31, 2010, a memorandum that informs all DDS Part C staff, parents, and early intervention service programs and providers of the requirements of OSEP's June 29 and June 30, 2010 memoranda (including the requirements in IDEA sections 615(e)(1) and 639(a)(8) and 34 CFR §§303.402, 303.419; 303.460; 303.510 through 303.512); and
- (4) Ensure that the statewide system of early intervention required by IDEA Part C in 20 U.S.C. 1431 through 1444 (including IDEA sections 615(e)(1) and 639(a)(8)) and applicable regulations in 34 CFR Part 303 (including 34 CFR §§303.402, 303.419; 303.460, 303.510 through 303.512) will be in effect throughout the FFY 2010 grant period.